IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7767 OF 2004

Ganpat Bhise Bhoir (Since Deceased)
Kamlakar Ganpat Bhoir & Ors. : Petitioners
(Orig. Plaintiffs)

V/s.

Bajrang Maruti Bhoir (Since deceased)
Vishnu Bajrang Bhoir & Ors. : Respondents
(Orig. Defendants)

AND

Smt.Parvatibai Baburao Patil & Ors. : Respondents

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Mr.V.R.Tripathi for the petitioners.
Mr.S.S.Redji for the respondent nos.1(a) to 1(i).
Mr.P.S.Tripathi for the respondent nos.2 to 4 & 6 to 11.
Mrs.V. Kamat for Mr.P.M.Pradhan for the respondent no.5.

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CORAM : S.A. BOBDE, J.

July 22, 2005.

P.C.:

1. Rule, returnable forthwith.

The learned counsel for the respective respondents waive service of rule.

Heard by consent.

2. The petitioners are heirs of the original plaintiff Ganpat Bhoir. The suit is for partition. Having discovered that the heirs of the sister of the original plaintiff have not been joined as parties to the suit, the petitioners moved an application for impleadment. The said heirs are the respondent nos.1 to 15.

3. In addition, the petitioners-plaintiffs pleaded certain facts which appear to be necessary and relevant for determining the real controversy in the suit. This position is not disputed by the respondent nos.1 to 11. In the circumstances, I see no reason why the Chamber Summons should not have been allowed.

4. In the circumstances, the impugned order is hereby set aside and the amendment along with the impleadment is hereby allowed. The reason for delay given by the learned trial Court is not sustainable since the evidence has not been recorded in the suit and no prejudice will be caused if the defendants, including the newly added defendants are allowed to file Written Statement and make consequential amendments, as the case may be.

5. The rule is made absolute in the aforesaid terms.

6. Certified copy expedited.

S.A. BOBDE, J.